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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,517	11/24/2003	Wolfgang Brixius	BRIXIUS-5	5330

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EXAMINER
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SHARMA, RASHMI K

ART UNIT	PAPER NUMBER
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3651

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/721,517

Applicant(s)

BRXIUS ET AL.

Examiner

Rashmi K. Sharma

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/26/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, transferring articles from the elevator to the conveyors and transferring articles from the lower conveyor to the elevator must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 8 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The recitation of the term "a start-up speed of the elevator" does not appear to be defined by the specification.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 2, 9, 10 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 2, 9 and 10 are lacking antecedent basis for the following recitations: claim 1 lines 12 and 13 "the conveyors"; claim 1 line 18 "the other one"; claim 2 line 1 "the two conveyors"; claim 9 lines 11 and 12 "the conveyors"; claim 9 line 14 "the one plane"; claim 10 lines 11 and 12 "the conveyors" claim 10 line 12 "the elevator starting

operation". The antecedent for the various recitations of "the conveyors" is unclear because it is unclear whether the phrase encompasses all three conveyors, or only the upper and lower conveyors. Appropriate correction is required.

Claim 11 recites "...in advance...." In lines 14 and 16. This term deemed to be vague and indefinite. It is unclear as to exactly what the Applicant intends to be claiming. Is the Applicant intending to claim that the first trigger position is now being identified to be below the upper end position? Is the second trigger position now being identified to be above the lower end position? Further clarification is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 5-13 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Fukuoka et al. (U.S. Patent number 4,867,299) in view of Jentjens et al. (U.S. Patent number 6,105,751).

Fukuoka et al. discloses a method and apparatus of a transport system for articles comprising an upper endless belt conveyor, a lower endless belt conveyor (see Figure 3) disposed in vertically spaced-apart planes, an elevator having an elevator conveyor (15 or 16) movable in a vertical direction between a lower end position wherein the elevator conveyor (15 or 16) is in alignment with the lower conveyor to form

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a lower transport path, an upper end position wherein the elevator conveyor (15 or 16) is an endless belt conveyor and is in alignment with the upper conveyor for form an upper transport path, a drive (15b, 16b, 17) associated with the elevator conveyor, a control unit (19b) to control the transfer of the articles from the elevator to the upper and lower conveyors in dependence on a vertical position of the elevator, the control unit comprising a signaling assembly having a first signaling member (15b of Figure 3) or sensors (in the area of the upper end position 4a and 9a of Figure 1) associated to one of the planes (an upper plane) indicating that the elevator has reached an upper trigger position, a second signaling member (16b) or sensor (in the area of the lower end position 9a of Figure 1) associated to the other one of the planes (a lower plane) for indicating the elevator has reached a lower trigger position. The control unit (19b) initiating movement of the articles on the elevator conveyor when the elevator ascends towards the upper trigger position and descends towards the lower trigger positions (please read column 6 lines 36-41 and lines 51-68), initiating and/or rendering the upper and lower conveyors to be operative when the elevator ascends towards the upper trigger position or descends toward the lower trigger positions respectively (please read column 5 lines 61-66 and column 6 lines 36-42), thereby the control unit initiating the movement of the articles after a predetermined time delay, wherein the time delay is dependent on a start-up speed of the elevator, as being inherent within the process of the control unit.

Fukuoka et al. as disclosed above, fails to show the method and apparatus of the articles being transferred from the upper or lower conveyors to the elevator conveyor.

Jentjens et al. does disclose a method and apparatus of articles being transferred from the upper or lower conveyors to an elevator conveyor (please read column 1 lines 52-57).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the direction of conveyance of Fukuoka's invention with the conveyance direction as disclosed by Jentjens invention, in order to provide for the transference of articles in either direction depending on the user's needs. The concept of providing for different conveyance directions within conveyor arrangements and systems is also very well known in the art. It would further have been obvious to perform all the method steps set forth in claim 10 in view of the apparatus of Fukuoka as modified by the teachings of Jentjens, because such method steps merely reflect the obvious and intended use of the disclosed apparatus in its expected fashion.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fukuoka et al. (U.S. Patent number 4,867,299) in view of Resch (U.S. Patent number 6,056,228).

Fukuoka et al. as disclosed above, fails to show sensors being selected from a group consisting of light barrier, light scanner, inductive sensor, mechanical sensor and ultrasonic sensor.

Resch does disclose a sensor (60) being a light scanner.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the sensor of Fukuoka's invention with the light scanner sensor of Resch's invention in order to provide for a variety of sensors to be used depending on the user's needs. The concept of varying the type of sensors used within conveyor arrangement and systems is very well known in the art.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rashmi K. Sharma whose telephone number is 571-272-6918. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathy Matecki can be reached on 571-272-6951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, reading "Kathy Matecki". The signature is fluid and cursive, with the first name "Kathy" and last name "Matecki" clearly distinguishable.

KATHY MATECKI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600